IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

OP.No. 6384 of 2001(I)

PETITIONER:

JOICE STEPHEN,
MADAPPURAM HOUSE,
CHEMBUKAVU,
THRICHUR.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS:
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1. THE ADDITIONAL SALES TAX OFFICER,
3RD CIRCLE, KOZHIKKODE.

2. TAHSILDAR (RR),
THRISSUR – 20.

BY ADV. SHRI.C.K.GOVINDAN, GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP NO. 6384/2001

ORDER ON CMP NO. 10484/2001 IN OP NO. 6384/2001

DISMISSED.

23/11/2007 SD/- (C.N.RAMACHANDRAN NAIR, JUDGE)

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE LICENCE ISSUED BY THE TRICHUR MUNICIPALITY TO THE PETITIONER TO CONDUCT WORKSHOP.

P2 : COPY OF THE WILL EXECUTED BY THE PETIITONER'S FATHER.

P3 : COPY OF THE REGISTERED DOCUMENT DATED 30/07/1990.

P4 : COPY OF THE REGISTERED DOCUMENT DATED 08/11/1991.

P5 : COPY OF THE ENCUMBARANCE CERTIFICATE ISSUED by the SUB REGISTRAR OFFICER.

P6 : COPY OF THE NOTICE DROPPED BY THE 2ND RESPONDENT IN THE WORKSHOP OF THE PETITIONER.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

O.P. No. 6384 of 2001

Dated, this the 23rd day of November, 2007

J U D G M E N T

Petitioner is challenging recovery proceedings for recovery of arrears of sales tax due from his brother, who is stated to be no more. Petitioner purchased property from his defaulter brother and therefore said property is proceeded against for recovery. Learned counsel for the petitioner submits that defaulter-brother of petitioner also has property in his name, which can be proceeded against. Even though petitioner was given an opportunity to obtain and produce orders of assessment to consider whether any relief could be granted, petitioner has not complied with the interim orders of this Court dated 10/03/2006. In any case, I do not think this Court should adjudicate the matter because the Tahsildar is the competent authority to consider petitioner's claim in question under Section 46 of the RR Act. If defaulter has no property, he has to consider the validity of transfer of property effected by the defaulter to petitioner and others with reference to Section 44 of the RR Act and Section 26A of the KGST Act. If sale made to the petitioner or to any other person is to defraud the revenue, then such sale can be ignored and property can be sold in recovery proceedings. Of

course, this arises only if defaulter has no other property. This original petition is, therefore, disposed of directing the Tahsildar to consider petitioner's claim before sale of the property. Petitioner will produce along with copy of this judgment, the details of other properties of the defaulter and make claim under Section 44 of the RR Act before the Tahsildar for his consideration.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg